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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 JEFFERY COOPER,

9 Petitioner

10 v.

11 NETHANJAH BREITENBACH, *et al.*,

12 Respondents.

Case No.: 3:23-cv-00067-RCJ-CSD

**Order Screening Petition, Denying
Application to Proceed *In Forma
Pauperis*, and Denying Motion for
Counsel**

13 Jeffery Cooper has submitted a *pro se* 28 U.S.C. § 2254 petition for a writ of
14 habeas corpus. (ECF No. 1-1.) He has paid the filing fee, therefore, his application to
15 proceed *in forma pauperis* is denied as moot. (ECF No. 1.) The court has reviewed the
16 petition pursuant to Rule 4 of the Rules Governing Habeas Corpus Cases Under
17 Section 2254 and directs that it be served on respondents.

18 A petition for federal habeas corpus should include all claims for relief of which
19 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
20 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
21 §2244(b) (successive petitions). If petitioner is aware of any claim not included in his
22 petition, he should notify the court of that as soon as possible, perhaps by means of a
23 motion to amend his petition to add the claim.

1 Cooper has also submitted a motion for appointment of counsel. (ECF No. 1-3.)
2 There is no constitutional right to appointed counsel in a federal habeas corpus
3 proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v.*
4 *Florida*, 549 U.S. 327, 336–37 (2007)). Whenever the court determines that
5 the interests of justice so require, counsel may be appointed to any financially eligible
6 person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district
7 court must evaluate the likelihood of success on the merits as well as the ability of the
8 petitioner to articulate his claims *pro se* in light of the complexity of the legal issues
9 involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Here, Cooper’s petition
10 sets forth his claims for relief clearly, and the legal issues do not appear to be
11 particularly complex. The court concludes that counsel is not warranted.

12 IT IS THEREFORE ORDERED that petitioner’s application to proceed *in forma*
13 *pauperis* (ECF No. 1) is **DENIED** as moot.

14 IT IS FURTHER ORDERED that the Clerk of Court file and electronically serve
15 the petition (ECF No. 1-1) on the respondents.

16 IT IS FURTHER ORDERED that the Clerk add Aaron D. Ford, Nevada Attorney
17 General, as counsel for respondents and provide respondents an electronic copy of all
18 items previously filed in this case by regenerating the Notice of Electronic Filing to the
19 office of the AG only.

20 IT IS FURTHER ORDERED that the Clerk detach and file the motion for
21 appointment of counsel (ECF No. 1-3).

22 IT IS FURTHER ORDERED that petitioner’s motion for appointment of counsel is
23 **DENIED**.

1 **IT IS FURTHER ORDERED** that respondents file a response to the petition,
2 including potentially by motion to dismiss, within **90 days** of service of the petition, with
3 any requests for relief by petitioner by motion otherwise being subject to the normal
4 briefing schedule under the local rules. Any response filed is to comply with the
5 remaining provisions below, which are entered pursuant to Habeas Rule 5.

6 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
7 in this case be raised together in a single consolidated motion to dismiss. In other
8 words, the court does not wish to address any procedural defenses raised herein either
9 in seriatum fashion in multiple successive motions to dismiss or embedded in the
10 answer. Procedural defenses omitted from such motion to dismiss will be subject to
11 potential waiver. Respondents should not file a response in this case that consolidates
12 their procedural defenses, if any, with their response on the merits, except pursuant to
13 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
14 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will
15 do so within the single motion to dismiss not in the answer; and (b) they will specifically
16 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
17 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
18 defenses, including exhaustion, should be included with the merits in an answer. All
19 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

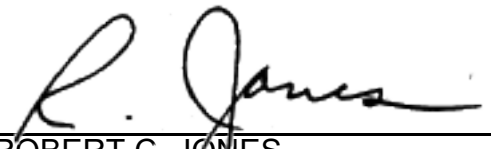
20 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
21 specifically cite to and address the applicable state court written decision and state
22 court record materials, if any, regarding each claim within the response to that claim.
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1 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the
2 answer, motion to dismiss, or other response to file a reply or opposition, with any other
3 requests for relief by respondents by motion otherwise being subject to the normal
4 briefing schedule under the local rules.

5 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
6 herein by either petitioner or respondents be filed with a separate index of exhibits
7 identifying the exhibits by number. The parties will identify filed CM/ECF attachments by
8 the number and will file each exhibit as a separate attachment.

9 **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of
10 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the
11 Reno Division of this court. Courtesy copies are to be mailed to the Clerk of Court, 400
12 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the
13 outside of the mailing address label. **No further courtesy copies are required unless**
14 **and until requested by the court.**

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17 DATED: August 10, 2023

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20 ROBERT C. JONES
21 UNITED STATES DISTRICT JUDGE
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